IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/03/2004

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THE HON'BLE MR.JUSTICE P.D.DINAKARAN

W.P.No.12913 of 2001

The Deputy General Manager
Bharat Overseas Bank Ltd.
Chennai-600 002. .. Petitioner

-Vs-

1. The Presiding Officer
Central Government Industrial
Tribunal-cum-Labour Court
Chennai.

2. V.Gopinathan .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorari, as stated therein.

For Petitioner : Mr.S.Ravindran

For Respondents : Mr.K.Chandru, Senior Counsel
for 2nd respondent

:ORDER

Aggrieved by the interim award dated 28.5.2001 of the first respondent/Tribunal made in I.D.No.74 of 2000, directing the petitioner/ Management to let in evidence on the merits of the charges and to prove the charges with respect to the alleged misconduct of the second respondent/ workman in a detailed enquiry, the petitioner/Management had preferred this writ petition for issue of a writ of Certiorari to call for the records of the first respondent/ Tribunal in I.D.No.74 of 200 0 and to quash its award dated 28.5.2001.

2. The Government, by their letter dated 19/20.9.2000, referred the following dispute for adjudication before the first respondent/ Tribunal:- "Whether the punishment of discharge imposed by Bharat Overseas Bank Ltd., Chennai on Shri N.Gopinathan is legal and justified? If not, what relief is the workman entitled?"

3. According to the petitioner/management, an enquiry was conducted against the second respondent/workman with reference to the charges relating

to the alleged misconduct, and finding the charges were held proved and the second respondent/workman was guilty of the charges, the petitioner/Management proposed to impose a punishment of discharging the second respondent/workman from service, of course after giving a personal hearing with reference to the proposed punishment based on the enquiry conducted by the disciplinary authority.

4. The second respondent/workman contested the dispute by taking a plea that the enquiry conducted by the enquiry officer with reference to the impugned charges was in violation to the principles of natural justice and in any event, he was not given a fair and reasonable opportunity before considering the past conduct of the record of service rendered by him for imposing the impugned punishment.

5. On the above rival contentions, the first respondent/Tribunal framed the following point for its consideration as a preliminary issue: "whether the domestic enquiry conducted by the II Party/ Management against the concerned workman/I Party is in gross violation of principles of natural justice?"

6. While deciding the above preliminary issue, the first respondent/Tribunal, by an interim award that 28.5.2001, holding that the domestic enquiry conducted by the petitioner/ Management against the second respondent/ workman was not in gross violation of principles of natural justice, so far as the Enquiry Officer's proceedings and the submission of enquiry report to the Disciplinary authority were concerned; and that since the Disciplinary Authority had not afforded an opportunity to the delinquent employee to comment upon his past record and as taken a unilateral consideration for imposing major penalty to discharge from service, the same amounts to violation of principles of natural justice, directed the petitioner/Management to let in evidence on the merits of the charges and to prove the charges with respect to the alleged misconduct of the second respondent/ workman in a detailed enquiry.

7. The only plea raised and vehemently urged by Mr.S.Ravindran, learned counsel for the petitioner/ Management is that the interim award dated 28.5.2001 passed on the preliminary issue by the first respondent/Tribunal is contrary to the finding that there was no violation of principles of natural justice in the enquiry conducted by the petitioner/Management against the second respondent/ workman.

8. In reply, Mr.K.Chandru, learned senior counsel appearing for the second respondent/workman contends that, this Court, while exercising the power conferred under Article 226 of the Constitution of India cannot entertain a writ petition against the award passed in a preliminary issue or otherwise, it will be contrary to the well settled principles laid down by the Apex Court as well as this Court, viz.,
(i) Cooper Engineering Ltd. v. P.P.Mundhe, AIR 1975 SC 1900;
(ii) Agro Cargo Transport Ltd. etc. v. E.Murugan & another, 1994 WLR 734;

(iii) Pattaraiswamy.S. v. The Management f Sundaram Industries Ltd. & another, 2000 WLR 284; and
(iv) S.Rajulu v. Management of Aurofood (P) Ltd., 2002 (1) L.L.N. 12 15.

9. I have given careful consideration to the submissions of both sides.

10.1. It is well settled in law that denial of a reasonable opportunity to the workman before taking into consideration his past record of service for imposing punishment at the appropriate time vitiates and nullifies the final order of punishment, vide S.Rajulu v. Management of Aurofood (P) Ltd., 2002 (1) L.L.N. 1215.

10.2. A Division Bench of this Court in Agro Cargo Transport Ltd. etc. v. E.Murugan and another, 1994 WLR 734 held as under:
"It is also the established legal position that normally the High Court, under Article 226 of the Constitution, does not interfere at the stage, as it is in the present case, on a finding recorded on preliminary issue because it is open to the Management to take upset price all the contentions at the later stage, if the award goes against it. As such, the Management does not lose the right to challenge the correctness of the finding recorded by the Labour Court. Here, it may be relevant to notice a decision of the Supreme Court in COOPER ENGINEERING LTD. Vs. P.P.MUNDHE reported in AIR 1975 SC 1900, wherein it has been held that it will be legitimate for the High Court to refuse to intervene at this stage of the proceeding before the Labour Court on a finding recorded on a preliminary issue. The relevant portion of the judgment is as follows:

"22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication, the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

Taking into account all these aspects of the matter, we decline to interfere with the order passed by the learned Single Judge and keep open all the contentions advanced on both sides. The appeal is, therefore, dismissed."

10.3. A similar view was also taken by another Division Bench of this

Court in Pattaraiswamy.S. v. The Management f Sundaram Industries Ltd. & another, 2000 WLR 284.

10.4. Any exception to the well settled principles referred supra, would only defeat the object of the Industrial Disputes Act, viz., to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life and by the process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country in its turn, helps to improve the conditions of labour. The Act is intended not only to make provision for investigation and settlement of industrial disputes but also to serve industrial peace so that it may result in more production and improve the national economy. In the present socio-political economic system, it is intended to achieve cooperation between the capital and labour which has been deemed to be essential for maintenance of increased production and industrial peace. The Act provides to ensure fair terms to workmen and to prevent disputes between the employer and the employees so that the large interests of the public may not suffer. The provisions of the Act have to be interpreted in a manner which advances the object of the legislature contemplated in the Statement of Objects and Reasons. In dealing with industrial disputes, the courts have always emphasized the doctrine of social justice, which is founded on the basic ideal of socio-economic equality as enshrined in the Preamble of our Constitution. While construing the provisions of the Act, the courts have to give them a construction which should help in achieving the object of the Act, vide Ajaib Singh v. Sirhind Coop. Marketing-cumProcessing Service Society Ltd., (1999) 6 SCC 82.

11. In view of the settled position of law enunciated by a catena of decisions referred supra, I am of the considered opinion that it would be impermissible for this Court to interfere with the interim award dated 28.5.2001 of the first respondent/Tribunal made in I.D.No.74 of 2000.

12. In the instant case, in the award dated 28.5.2001 made in I.D. No.74 of 2000, even though the first respondent/ Tribunal had found that the disciplinary authority had not afforded opportunity to the second respondent/workman to comment upon his past record while imposing the proposed punishment of discharging the service of the second respondent/workman, which amounts to violation of principles of natural justice, it also held that the domestic enquiry conducted by the petitioner/ Management against the second respondent/workman was not in gross violation of the principles of natural justice, which, in my considered opinion, cannot be lightly disregarded.

13. For the reasons aforesaid, even though I do not propose to interfere with the impugned interim award dated 28.5.2001 and dismiss this writ petition, I make it clear that the petitioner/Management is at liberty to move the first respondent/Tribunal seeking clarification as to the scope of the opportunity to be provided to the second respondent/workman to comment upon his past record, either for the purpose of imposing punishment or to prove the charges relating to the alleged misconduct levelled against him, with a further direction to the first respondent/ Tribunal to pass appropriate orders on such application for clarification and thereafter, to proceed with

the matter in accordance with law.

In the result, this writ petition is dismissed with the above observations and accordingly, the matter is remitted to the first respondent/Tribunal to proceed further and pass appropriate orders expeditiously, in any event within six months from the date of receipt of copy of this order. No costs.

To:

1. The Presiding Officer
Central Government Industrial
Tribunal-cum-Labour Court
Chennai.